

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-10

Date issued: April 23, 1992
Requested by: Michael E. Keller
Walsh County State's Attorney

- QUESTION PRESENTED -

Whether the provisions of N.D.C.C. ch. 15-22 concerning the selection of county superintendents of schools may be superseded by the provisions of a county home rule charter.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the provisions of N.D.C.C. ch. 15-22 concerning the selection of county superintendents of schools may be superseded in a home rule county if the proper authorization is included in the home rule charter and implemented through ordinances.

- ANALYSIS -

In 1989, the legislature passed House Bill No. 1640 which amended various sections of the North Dakota Century Code, including N.D.C.C. " 15-22-01 and 15-22-02. 1989 N.D. Sess. Laws ch. 137. The amendments changed the county superintendent of schools from an elected position to an appointed position and changed the qualifications of the county superintendent of schools. The amendments are effective July 1, 1992. You question whether the manner of selection and qualifications of the county superintendent of schools may be superseded by a county home rule charter.

Counties are creatures of the constitution and have only those powers provided by the North Dakota legislature. N.D. Const. art. VII, ' 2; County of Stutsman v. State Historical Society, 371 N.W.2d 321 (N.D. 1985). The powers of a home rule county are described in N.D.C.C. ch. 11-09.1 which states, in part:

Powers. After the filing with the secretary of state of a charter approved in reasonable conformity with this chapter, the county and its citizens may, if included in the charter and implemented through ordinances:

. . . .

3. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter, a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election. Notwithstanding the other

provisions of this subsection, a charter or ordinance or act of the governing body of a home rule county may not supersede any state law concerning the office or jurisdiction of the county court or county judge.

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The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

N. D. C. C. ' 11-09.1-05. "The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city." N. D. C. C. ' 11-09.1-04. Thus, if the power described in subsection 3 of N. D. C. C. ' 11-09.1-05 includes the power to determine whether a county superintendent of schools is elected or appointed and the authority to determine the county superintendent of schools' qualifications, and if those powers are included in the county home rule charter and implemented through county ordinances, the changes implemented by N. D. C. C. " 15-22-01 and 15-22-02 do not apply.

Subsection 3 of N. D. C. C. ' 11-09.1-05 states that a county has the authority to "[p]rovide for county elected and appointed officers," including their selection and qualifications. The wording of subsection 3 of N. D. C. C. ' 11-09.1-05 indicates clearly that home rule counties may determine the manner of selection and the qualifications of county elected and appointed officers and employees if such authority is included in the home rule charter and implemented through ordinances.

In conclusion, if authorization such as that appearing in subsection 3 of N. D. C. C. ' 11-09.1-05 is included in a county's home rule charter and its terms are implemented through ordinances, the terms of the home rule charter and ordinances prevail over N. D. C. C. " 15-22-01 and 15-22-02.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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